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)UM FOR STEVE COMPTON
CHIEF FINANCIAL OFFICE REVENUE SYSTEMS

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Prompt Deposit of Remittances

This responds to your request for a legal opinion concerning whether the Service's plan to transship misdirected payments to another site for deposit and processing complies with prompt deposit requirements. The Submission Center Directors have historically been designated (per Delegation Order) as the accountable officer and owner of the general ledger for these remittances and related revenue receipt activity. The decision has now been made to eliminate the Submission Center function in Brookhaven and Memphis, and the Service intends to transship any misdirected remittances received in those sites to another center that is retaining the deposit function.[1] While these are the specific facts of the request for opinion, the same issue is presented by any case of a misdirected or erroneously received payment by any Service office. For the reasons below, the Service may transship misdirected payments to the appropriate processing center without violating the prompt deposit requirements of 31 U.S.C. § 3302 and IRC § 7809. The Service employee receiving a misdirected payment remains accountable for the payment until it is received by the processing center to which it is directed.

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[1] This issue is expected to effect whether the Service must retain a payment processing/deposit at Brookhaven and Memphis to process any misdirected payments.

The Prompt Deposit Act, 31 U.S.C. § 3302, mandates that agencies deposit "as soon as practical" all funds received for the use of the United States in the General Fund of the Treasury as miscellaneous receipts. *See, e.g.*, Comp. Gen. Op. B-265727 (July 19, 1996). The Deficit Reduction Act of 1984 amended the Prompt Deposit Act to make clear that "as soon as practical" means no later than the third day after the agency receives the funds, *unless* Treasury by regulation specifies a shorter or longer time for deposit. *See* P.L. 98-369, Div. B, Title VI, Subtitle C, Sec. 2652(b)(1), 98 Stat. 1153 codified at 31 U.S.C. § 3302(c). Treasury has adopted a regulation which provides that receipts will be deposited on the same day as that on which they are received, except where such deposit is impractical or not cost-effective, in which event, next-day deposit is required. 31 C.F.R. § 206.5. The regulation also notes that other exceptions to the same-day deposit rule are contained in volume I, chapter 6-8000, of the Treasury Financial Manual (TFM). *Id.* That section of the TFM creates an exemption for receipts that do not total $5,000 by allowing deposits of such amounts on the next Thursday or when the funds reach $5,000, whichever is sooner. I TFM 6-8030.20.

While 31 U.S.C. § 3302(c) and its implementing regulations establish the general deposit requirements for agencies, specific statutory language may mandate a different deposit procedure. I TFM 6-8010. In that regard, Internal Revenue Code § 7809 (which shares a common origin with the original 31 U.S.C. § 3302 (*see* 55 Comp. Gen. 625 (1976)) provides:

> [T]he gross amount of all taxes and revenues received under the provisions of this title, and collections of whatever nature received or collected by authority of any internal revenue law, shall be paid *daily* into the Treasury of the United States under instructions of the Secretary as internal revenue collections, by the officer or employee receiving or collecting the same, without any abatement or deduction on account of salary, compensation, fees, costs, charges, expenses, or claims of any description. . . .

26 U.S.C. § 7809(a) (emphasis added). This requirement dates back to 1865, when, in response to collectors holding large sums of receipts, legislation authorizing revenue collectors to pay receipts monthly was changed to impose a daily deposit requirement. Compare 33 Stat. 223 (June 30, 1864) with 13 Stat. 483 (March 3, 1865); 67 Cong. Globe 1143 (February 27, 1865) (Mr. Wilson discussing collectors holding as much as $8,000,000).

We have checked the legislative history of the Deficit Reduction Act to ascertain whether Congress contemplated that that Act's amendments to the Prompt Deposit Act would apply to receipts obtained under internal revenue laws. The Conference Report on the legislation underlying the Deficit Reduction Act reveals that the three-day rule and Treasury authority to extend or reduce it was proposed to address "nontax debt" to

help alleviate the deficit burden created by $55 billion in nontax obligations to the Government. H.R. 98-861, 98th Cong., 2d Sess. 1412-13 (1984).[2] Thus, we cannot say that the more liberal deposit time requirements of section 3302(c) were intended to apply to receipts obtained under the internal revenue laws. Given the lack of legislative history to the contrary, the specific terms of section 7809(a) (*i.e.*, the daily deposit requirement) are controlling. *Stewart v. Smith*, 673 F.2d 485, 492 (D.C. Cir. 1982).

However, while the daily deposit requirement applies to tax payments, it is obvious that this requirement is not feasible in cases where the funds have not been received by an employee or office with the responsibility to make such deposits into the Treasury. As discussed above, the legislative history indicates that the intent of the statute was to ensure that revenue collectors would not withhold revenue or delay its deposit. In our opinion, the daily deposit requirement of the statute does not apply until the employee or office responsible for making such deposits is actually in receipt of the revenue.[3] Therefore, any employee or office erroneously receiving a tax payment should take immediate steps to send the payment to the appropriate Service office for processing and deposit. The time it takes for the payment to get to the appropriate processing center does not cause a violation of the daily deposit requirement.

Any Government officer or employee who by reason of his or her employment is responsible for or has custody of Government funds is an "accountable officer" and is, therefore strictly liable for the loss of Government funds under his or her control absent evidence showing that the loss occurred without fault or negligence on the part of the accountable officer. *See, e.g, 72* Comp. Gen. 49 (1992). Thus, even if a tax payment is erroneously received, the employee who has custody of the payment becomes an accountable officer and must take steps to safeguard the payment. Funds that are shipped are considered to remain in the custody of the sender, and a loss in shipment is a physical loss for which an accountable officer is liable. *See* GAO, *Principles of Federal Appropriations Law* (2d ed), 9-48; Comp. Gen. B-185905-O.M. (April 23, 1976). The Comptroller General has held, however, that since funds in the process of shipment are outside of the control of the accountable officer, no presumption of negligence is applicable under these circumstances, and relief will be granted so long as the employee complied with applicable regulations and procedures. *See* Comp. Gen. B-164450-O.M. (September 5, 1968).

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[2] That legislation also allowed the Service to reduce refunds by nontax debt.

[3] We have discussed this issue with the Financial Management Service which concurred in this interpretation and indicated that it is consistent with that office's procedures for processing funds.

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For the above reasons, any office erroneously receiving a tax payment should immediately send the payment to the appropriate processing center pursuant to procedures established to ensure accountability. Even though it is possible that a number of erroneous payments may be anticipated at Brookhaven and Memphis, a payment processing/deposit function does not have to be retained at those sites in order to comply with the daily deposit requirements of IRC § 7809.

If you have any questions regarding this matter or if we can be of further assistance, please contact Randall Hall of this office at (202) 283-7900.

cc: Richard Goldstein
Counsel to Assistant Chief Counsel, Procedure and Administration

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[4] Although management officials would not be held liable for the loss of funds under the general standards of Federal law, GAO has held that individual agencies have the discretion to impose more stringent standards of responsibility. Comp. Gen B-266245, *supra.* The Service has now imposed such a standard of responsibility in IRM 3.0.167.2.1. That provision indicates that management is responsible for losses where they failed to provide internal controls. Accordingly, there may be more than one accountable officer in a given case. *See* GAO, *Principles of Federal Appropriations Law* (2d ed.), 9-13; 60 Comp. Gen. 674 (1981).